



S. 1738 -- PROTECT Our Children Act of 2007

FLOOR SITUATION

S. 1738 is being considered on the House floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Senator Joe Biden (D-DE) on June 28, 2007. The bill was passed by unanimous consent on September 25, 2008.

The House passed similar legislation, H.R. 3845 on November 14, 2007, by a vote of 415-2. Also incorporated in S. 1738 is another House bill, the SAFE Act of 2007 (H.R. 3791), which passed the House on December 5, 2007, by a vote of 409-2.

S. 1738 is expected to be considered on the House floor on September 26, 2007.

BACKGROUND

According to the Department of Justice, "Producing child abuse images has now become easy and inexpensive. The Internet allows images and digitized movies to be reproduced and disseminated to tens of thousands of individuals at the click of a button. The distribution and receipt of such images can be done almost anonymously. As a result, child pornography is readily available through virtually every Internet technology (web sites, email, instant messaging/ICQ, Internet Relay Chat (IRC), newsgroups/bulletin boards, and peer-to-peer). The technological ease, lack of expense, and anonymity in obtaining and distributing child pornography has resulted in an explosion in the availability, accessibility, and volume of child pornography."

**Note: The current definition of child pornography is (18 USC 2256) "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct."*

Among other programs focused on protecting children on-line, is Project Safe Childhood (PSC), which is administered by the Department of Justice. This program aims to combat the proliferation of technology-facilitated sexual exploitation crimes against children through the collaboration of local, state, tribal and federal agencies. The program has a similar structure to the Project Safe Neighborhood, which is focused on the reduction of gun crime.

A complete list of federal statutes governing child pornography and enticement crimes can be found at: <http://www.projectsafchildhood.gov/appendixa.pdf>

SUMMARY

National Strategy for Child Exploitation Prevention and Interdiction: The bill requires the Attorney General to establish this strategy within one year of enactment. The strategy includes a number of provisions to reduce child exploitation, including comprehensive, long-term, quantifiable goals for reducing child exploitation, annual measurable objectives and goals, and budget priorities.



LEGISLATIVE DIGEST

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Internet Crimes Against Children Task Force Program: The bill establishes the Internet Crimes Against Children Task Force (ICAC) Program within the Office of Justice Programs in the Department of Justice. ICAC is comprised of state and local law enforcement task forces in each state. The purpose of the ICAC task forces is to increase prosecutions, training, investigations and awareness of internet crimes against children. It is the intent of Congress to continue the ICAC Task Force Program authorized under title I of the Commerce, Science, Justice Appropriations Act of 1998 and the Juvenile Justice and Delinquency Act of 1974.

**Note: Currently, the ICAC has 46 Federal, State, and local task forces across the nation. ICAC has been operating since 1998.*

National Internet Crimes Against Children Data Network Center

The bill establishes the National Internet Crimes Against Children Data Network Center, which will be used to assist the ICAC Task Force Program and agencies investigating child exploitation. The Center is required to develop and maintain an integrated technology and training program that provides:

- a secure online information-sharing system for use by ICAC Task Forces, Federal law enforcement agencies, and other State and local law enforcement agencies;
- a secure, online system for resolving case conflicts, for use by ICAC Task Forces, Federal law enforcement agencies, and other State and local law enforcement agencies;
- a secure data storage and analysis system for use by ICAC Task Forces, Federal law enforcement agencies, and other State and local law enforcement agencies;
- guidelines for the use of such Data Network by Federal, State, and local law enforcement agencies; and
- training and technical assistance on the use of such Data Network by Federal, State, and local law enforcement agencies.

The bill establishes the ICAC Data Network Steering Committee in order to provide guidance to the Center and help establish the Center's strategic plans. The steering committee will have ten members, from ICAC task forces, agencies, and other offices within the Department of Justice. The bill authorizes \$2 million for each of the fiscal years 2009-2016.

**Note: A complete list of Members can be found in section 105(g) of the bill.*

ICAC Grant Program: The bill authorizes the Office of Justice Programs to award grants to ICAC task forces. The grants can be used for hiring of personnel and investigators, training, establishing forensic laboratories, and to support investigations. Grant recipients are required to submit a report annually to the Attorney General outlining the current status of the task force, including staffing levels, investigations, and referrals to the U.S. Attorney's Office. The bill authorizes appropriations of \$60 million for each of the fiscal years 2009-2013.

Forensic Laboratories: The bill authorizes use of funds to establish new regional computer forensic laboratories within the Regional Computer Forensic Laboratories Program operated by the Federal Bureau of Investigation (FBI) or may increase capacity at existing laboratories. The Attorney General is required to submit an annual report describing how the funds were used. The bill authorizes \$2 million for fiscal years 2009-2013.



Expanding List of Offenses: The bill prohibits the broadcast of live images of child abuse and prohibits the adaptation or modification of an image of an identifiable minor to produce child pornography.

Securing Adolescents from Online Exploitation Act

**Note: This section includes H.R. 3791, the SAFE Act of 2007, which passed the House by a vote of 409-2.*

Reporting Requirements: S. 1738 requires any entity that is providing an electronic communication service or a remote computing service to the public to report instances to the CyberTipline of individuals responsible for violating child sexual exploitation and pornography laws. The report must include (1) information on the individual that has committed the violation, including the website address, email address, and uniform resource locator; (2) historical data on the child pornography; (3) location of the individual involved; (4) images of apparent child pornography; and (5) contact information on the service provider making the report.

The bill requires the National Center for Missing and Exploited Children to forward any report to the appropriate Federal agency and authorizes the Center to forward the report to appropriate state and local law enforcement agencies as well as foreign law enforcement agencies. The bill requires a service provider to store the image or information that prompted a report for at least 90 days.

**Note: This would include any person that employs, uses, persuades, induces, entices, or coerces any minor to engage in this type of conduct.*

Penalty for Failure to Comply: The bill also establishes a penalty for knowingly and willfully failing to make the reports required. The penalty for a first offense is up to \$150,000 and any additional offense carries a penalty up to \$300,000. purpose of assisting the attorney, or to a defendant in the criminal matter that the report relates to.

Liability Protections: The bill also provides liability protections for service providers performing the reporting requirement against civil claims or criminal charges. These protections do not extend to intentional, reckless or other forms of misconduct. Similar protections are also provided for the National Center for Missing and Exploited Children.

COST

At the time of publication, the Congressional Budget Office (CBO) had not yet scored this legislation.

STAFF CONTACT

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